

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Paul W. Watt et al.
Serial No. : 09/164,793 Art Unit: 3731
Filed : October 1, 1998 Examiner: G. Jackson
For : BIOPOLYMER SPONGE TUBES, SURGICAL STAPLERS AND
METHODS OF USE THEREOF

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October 11, 2001

(Date)

Theodore J. Shatynski

Name of applicant, assignee, or Registered Representative

Theodore J. Shatynski

(Signature)

October 11, 2001

(Date of Signature)

BOARD OF PATENT APPEALS
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REPLY BRIEF

In response to the Examiner's Answer of August 13, 2001, relating to the above-identified
patent application, the Appellant wishes to respond to several new points of argument made by the
Examiner.

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Status of Claims

The Examiner states that the Amendment After Final has not been entered and that the Advisory Action mailed March 27, 2001 clearly indicates this. However, the undersigned attorney for Appellant phoned the Examiner on September 28, 2001 explaining that such Advisory Action was not received by the undersigned and requested that a copy of such Advisory Action be facsimiled to the undersigned at 732-524-5008. No facsimile has yet been received. Clarification and proof regarding entry or non-entry of the Amendment After Final is requested from the Board.

Summary of Invention

The Examiner states that the Summary of Invention is deficient because the recitation of "uniform composition and construction" is not supported in the specification and neither has such recitation been considered as a limitation of Claim 1. However, support for the Amendment is found, for example, in Example 1 and Figures 2(a) to 2(d) which clearly depict a closed-end tube of uniform composition and construction. This issue is related to the above issue regarding the Status of the Claims because the Summary of the Invention reflects what Appellant has amended Claim 1 to recite. Clarification and proof regarding entry or non-entry of the Amendment After Final is requested from the Board.

Grouping of Claims

The Examiner states that all claims stand or fall together; specifically the Examiner reasons that when "Group I is meet(sic) clearly Groups II and III are meet(sic) since the purpose is a well-known concept in the surgical stapling art. Group III do(sic) not add any patentable distinguishable features to Groups I and II."

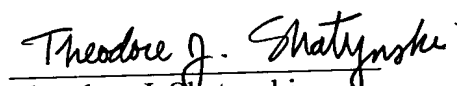
Appellant maintains the separate patentability of the claims as outlined in the Appeal Brief.

Response to Argument

This is the first instance that the Examiner has provided his own definition of "tubular". However, Appellant submits what Examiner submits as "tubular" is ("sock clothing", "toothpaste" k) immaterial as what is claimed is a "tube" with a closed-end. The Examiner further alleges that Figure 1 (a sutured bag) of the primary reference Igaki fits within a definition from Webster's Ninth New Collegiate Dictionary. The undersigned Attorney on September 28, 2001 spoke to the Examiner and the Examiner agreed to facsimile to the unassigned Attorney's facsimile number (732-524-5008) the definition relied on by the Examiner. No such facsimile was received by the undersigned Attorney. Appellant submits that one skilled in the art would not consider "sock clothing" or and "toothpaste" to fit the description of a tube as claimed and understood by one skilled in the art upon reading the specification of Appellant's patent application.

Appellant submits that the foregoing reply to new points raised by the Examiner further aid the arguments for the patentability of the invention as claimed and respectfully respect reversal of the Examiner's rejections in their entirety.

Respectfully submitted,


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